

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8685 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN
and
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

YADAV JAGDISHKUMAR SUKHLAL

Versus

STATE OF GUJARAT

Appearance:

MR JS YADAV for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
MR RR MARSHALL for Respondent No. 2

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN
and

MR.JUSTICE M.S.SHAH

Date of decision: 21/01/98

ORAL JUDGEMENT {Per : Sreedharan, CJ.}

Petitioners - husband and wife, practising as Advocates, have moved this application as Public Interest Litigation. They want to have more sources of entertainment, "curing of health", Swimming pools and other institutions which have relations with entertainment and health of the public at large in the eastern part of Ahmedabad City. It is their case that there are about 4 Swimming Pools in existence in the eastern part of Ahmedabad City, out of which, two are out of order. The one which is situated near the residence of petitioners went out of order in 1990 and its present condition is shabby, while those in western part of the City, are maintained and are kept in tolerably good condition. There is one area admeasuring 10,000 sq. mtrs. lying vacant in Saraspur area which is known as "Potalia Talav". Respondents have not taken care to improve this area. If this area is improved, the children of that area will get a park and it will go to improve their physical condition. The non use of the said space by the Municipal Corporation is a failure to discharge statutory obligation by the Municipal Corporation. The Municipal Corporation is required to provide facilities for recreation, swimming pool, health club, amusement park, etc. for the inhabitants of the Corporation. Peoples who are residing near Potalia Talav belong to lower strata. They must be provided with facilities for amusement by the Corporation by spending its own money. That land should be directed to be improved by constructing Entertainment Park. On these basis, they have prayed for issuance of writ of mandamus directing the Officers of the Municipal Corporation to construct amusement park/health club, garden and other entertainment circles in that area known as Potalia Talav, situated at Saraspur and to complete the construction work of Saraspur Municipal Snanaghar without any delay.

Officer incharge of Balvatika of Ahmedabad Municipal Corporation has filed Affidavit dated 17th January, 1998 in reply to the averments made by the petitioners. According to the affidavit, Municipal Corporation has not adopted step-motherly treatment towards any area within the Corporation. The endeavor of the Corporation has been to see that all areas in the City develop equally and are kept clean and habitable. Assertions made by the petitioners that no amusement park is constructed in the eastern zone of the city is factually incorrect. The Corporation has taken a decision to open three more amusement parks in the city and one of such park will be in the eastern zone near

Naroda Bus Stand. That place has been selected keeping in mind the open area available there and the financial viability in establishing such a park. Saraspura Swimming Pool had to be closed down due to leakage problem and a sum of Rs. 30 lacs is required to make it fully operational. In the budget for the year 1997-98, Rs. 20 lacs have been allotted for improving the said Swimming Pool. Out of that Rs. 8 lacs cash flow has already been given, Rs. 6 lacs have been spent and within 9 to 12 months, the said Swimming Pool will become fully functional. Affidavit concludes by stating that the Corporation is making all efforts to see that the eastern zone is also given its due and the petition is only to be rejected.

The main grievance voiced by the petitioners is lack of facility for amusement to the inhabitants of the eastern sector of the areas included in the Corporation. Petitioners would say that the area known as Patalia Tallav having an area of nearly 10,000 sq. meters is most suitable for constructing an amusement park. As the Corporation has decided to set up three amusement parks in different parts of Ahmedabad Corporation, authorities have located one near Naroda Bus Stand. Choice of the site for amusement park lies with the Corporation and area cannot be chosen by the petitioners. But taking into consideration the pitiable plight of the inhabitants of the locality, we state that while running amusement park near Naroda Bus Stand, admission fees should be fixed taking into consideration the purchasing power of the inhabitants of that area. Corporation cannot compel to have the amusement park shifted to an area known as Patolia Talav. Establishment of amusement park at Naroda Bus Stand will certainly go to improve the living conditions of that eastern sector.

Saraspur Swimming Pool is in a very bad shape and this fact is admitted by the Corporation in its affidavit. Budgetary provision has been made for the year 1997-98. To make it functional more than 6 lacs rupees have been spent as on date and the Corporation expects that it will become fully functional within 9 to 12 months. This work undertaken by the Corporation has gone to improve the living condition of the residents of the eastern sector as well.

In view of what has been stated above, we do not find any ground to give any further direction to the Corporation, except saying that Corporation should not resort to step-motherly attitude in improving the eastern sector. We are sure that Municipal Corporation of

Ahmedabad will seriously consider the feasibility of converting the area known as Potalia Talav as a garden or park for improving the living condition of the people of that locality.

Special Civil Application stands disposed of in above terms.

Prakash*